

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**MATTHEW GIBSON,**

**Plaintiff,**

**v.**

**Civil Action No. 5:21-CV-00181**

**LOUISE E. GOLDSTON, individually,  
COUNTY COMMISSION OF RALEIGH  
COUNTY, a political subdivision,  
JEFF MCPEAKE, individually,  
BRIAN WHITE, individually,  
BOBBY STUMP, individually,  
KYLE LUSK, individually,**

**Defendants.**

**DEFENDANT KYLE LUSK'S MOTION TO DISMISS**

Mr. Lusk moves to dismiss the claims against him pursuant to Federal Rules of Civil Procedure 12(b)(5) and (6) because he was not served a copy of the summons and because the Complaint fails to state a claim for which relief can be granted against him. As more fully detailed in the accompanying memorandum of law, Mr. Lusk was not a state actor or acting under color of law, therefore, the Plaintiff's 42 U.S.C. § 1983 claims against him fail as a matter of law. Further, because the acts at issue occurred in the course of Mr. Lusk's representation of a client during a Family Court hearing, Mr. Lusk is shielded from suit by the litigation privilege. For these reasons, Mr. Lusk respectfully requests that this Court dismiss all claims against him with prejudice.

**KYLE LUSK,**

**By Counsel,**

/s/ Arie M. Spitz

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CERTIFICATE OF SERVICE

I, Arie M. Spitz, counsel for Defendant Kyle Lusk, do hereby certify that I have filed a true copy of the foregoing ***Defendant Kyle Lusk's Motion to Dismiss*** this 19<sup>th</sup> day of April 2021 with the Clerk of the Court using the CM/ECF filing system, which will send notification of such filing to the below listed CM/ECF participants:

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Brian White and Bobby Stump*

/s/ Arie M. Spitz

Arie M. Spitz (WVSB # 10867)